

## APPEAL NO. 010845

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 5, 2001. With regard to the only issue before her, the hearing officer determined that the appellant (claimant) had a 13% impairment rating (IR) as assessed by the designated doctor. The claimant appealed on the basis that the designated doctor had incorrectly measured range of motion (ROM) for the straight leg raise (SLR), and urged that his treating doctor's measurements and resulting rating of 16% were correct. The respondent (self-insured) seeks affirmance.

### DECISION

Affirmed.

The claimant suffered a lumbar spinal injury when, riding as a passenger in a van, the van struck a pothole, causing the claimant "to be pitched upward" landing on his buttocks. The claimant required two spinal surgeries at the L4-5 level; the first failed. Statutory maximum medical improvement (MMI) was reached on February 3, 2000; the claimant suffered residual symptoms. The claimant's treating neurologist, Dr. P, in a report dated March 7, 2000, found the claimant's IR to be 16%, based on an 11% impairment from Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association and a 5% impairment for lateral flexion and extension. No neurological deficits were noted. The carrier challenged this finding and Dr. K was appointed the designated doctor. In a report dated July 19, 2000, Dr. K assessed a 13% IR based on a 10% impairment from Table 49, Section II(E), plus 2% impairment "due to failed back surgery." Dr. K assessed 1% impairment for motor deficit of the L4 and S1 nerves. ROM was invalidated based on the SLR. Dr. P objected and conveyed to the Texas Workers' Compensation Commission his belief that there was an error. Dr. K then had the claimant remeasured, with Dr. K again invalidating ROM based on the SLR, and found lateral flexion and extension within "normal [ROM]."

The hearing officer found that the difference in measurements resulted from a difference of medical opinion between the designated doctor and the treating doctor. Such a difference of opinion cannot overcome the presumptive weight afforded the designated doctor's opinion. The designated doctor's report should not be rejected "absent a substantial basis to do so." Texas Workers' Compensation Commission Appeal No. 93039, decided March 1, 1993.

The hearing officer's decision is supported by the evidence and is not against the great weight and preponderance of the evidence. Accordingly, the hearing officer's decision and order are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Michael B. McShane  
Appeals Judge